

MONTANA LEGISLATIVE HISTORY

Chapter 418 192001

Bill H _____ S 495

Original bill & history ✓ C

H. Committee on Education

Hearing Date(s) 4/2 C

_____ C

_____ C

_____ C

Date Out _____ C

S. Committee on Taxation

Hearing Date(s) 3/16 ✓ C

3/20 ✓ C

3/23 ✓ C

3/28 ✓ C

Did this bill originate in an interim committee? _____ Yes _____ No ✓

Committee _____

Report _____

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING SCHOOL FUNDING THROUGH THE USE OF THE
5 PUBLIC SCHOOL FUND; REVISING THE STRUCTURE OF THE PUBLIC SCHOOL FUND; AUTHORIZING THE
6 BOARD OF INVESTMENTS TO PURCHASE THE MINERAL RIGHTS HELD BY THE PUBLIC SCHOOL FUND;
7 PROVIDING THAT A PORTION OF ROYALTY PAYMENTS ON THE PURCHASED MINERAL RIGHTS MUST
8 BE DEPOSITED IN THE GUARANTEE ACCOUNT; AND PROVIDING AN EFFECTIVE DATE."

(2) The term does not include mineral royalties or land sale proceeds that are deposited directly in the permanent fund or net unrealized capital gains that remain in the permanent unrealized fund until realized.

(2) The permanent fund must be invested for the purpose of generating future income for distribution to public elementary and secondary school districts as provided in Article X, section 5, of the Montana constitution.

26 NEW SECTION. **Section 3. Guarantee account.** There is a guarantee account in the state special
27 revenue fund. The guarantee account is intended to stabilize the long-term growth of the permanent fund
28 and to maintain a constant and increasing distributable revenue stream. All realized and unrealized capital
29 gains and all distributable revenue must be deposited in the guarantee account. The guarantee account
30 must be distributed to school districts as provided by law.

1

2 **NEW SECTION.** **Section 4. Purchase of permanent fund mineral estate.** The board of investment
3 may purchase the mineral rights held by the public school fund established in Article X, section 2, of the
4 Montana constitution for fair market value. If the board of investments purchases mineral rights, any
5 royalty payments received by the board that are not used to reimburse the fund purchasing the mineral
6 rights must be deposited in the guarantee account provided for in [section 3].

7

8 **NEW SECTION.** **Section 5. Codification instruction.** (1) [Sections 1 through 3] are intended to be
9 codified as an integral part of Title 20, chapter 9, and the provisions of Title 20, chapter 9, apply to
10 [sections 1 through 3].

11 (2) [Section 4] is intended to be codified as an integral part of Title 17, chapter 6, part 3, and the
12 provisions of Title 17, chapter 6, part 3, apply to [section 4].

13

14 **NEW SECTION.** **Section 6. Effective date -- coordination.** [This act] is effective July 1, 2001.

15

- END -

	53-1-202, 61-8-731, AND 61-8-732, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE	1965
418	(<i>Senate Bill No. 495; Thomas</i>) REVISING SCHOOL FUNDING THROUGH THE USE OF THE PUBLIC SCHOOL FUND; REVISING THE STRUCTURE OF THE PUBLIC SCHOOL FUND; AUTHORIZING THE BOARD OF INVESTMENTS TO PURCHASE THE MINERAL PRODUCTION RIGHTS HELD BY THE PUBLIC SCHOOL FUND; PROVIDING THAT A PORTION OF ROYALTY PAYMENTS ON THE PURCHASED MINERAL PRODUCTION RIGHTS MUST BE DEPOSITED IN THE GUARANTEE ACCOUNT; LOANING MONEY FROM THE COAL SEVERANCE TAX PERMANENT FUND TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR THE PURCHASE OF THE MINERAL PRODUCTION RIGHTS; APPROPRIATING THE LOAN PROCEEDS; REQUIRING REPAYMENT OF THE EXPENDED AMOUNTS FROM MINERAL ROYALTY PROCEEDS; DELETING THE PROHIBITION ON PUBLIC FUND INVESTMENT IN CORPORATE STOCK CONTINGENT ON THE PASSAGE OF THE CONSTITUTIONAL AMENDMENT ALLOWING INVESTMENT IN CORPORATE STOCK; AMENDING SECTIONS 17-6-201, 77-2-303, AND 77-2-304, MCA; AND PROVIDING EFFECTIVE DATES.	1970
419	(<i>Senate Bill No. 501; Grosfield</i>) GENERALLY REVISING THE TAXATION OF PROPERTY; REVISING THE LIMIT ON PROPERTY TAXES; ALLOWING A GOVERNMENTAL ENTITY TO CARRY FORWARD MILL LEVY AUTHORITY; REQUIRING THE DEPARTMENT OF REVENUE TO PROVIDE CERTIFIED VALUES FOR NEWLY TAXABLE PROPERTY AND TOTAL TAXABLE VALUE, EXCLUSIVE OF NEWLY TAXABLE PROPERTY, OF CERTAIN CENTRALLY ASSESSED PROPERTY; REQUIRING THE DEPARTMENT OF REVENUE TO RECERTIFY THE TAXABLE VALUE OF CERTAIN CLASS THIRTEEN PROPERTY FOR TAX YEAR 2000; REQUIRING LOCAL GOVERNMENTS TO RECALCULATE PROPERTY TAXES THAT WOULD HAVE BEEN ACTUALLY ASSESSED BASED ON THE RECERTIFICATION OF CERTAIN CLASS THIRTEEN PROPERTY; REVISING THE REQUIREMENTS FOR REPORTING CERTIFIED TAXABLE VALUE BY THE DEPARTMENT OF REVENUE TO LOCAL TAXING AUTHORITIES; ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF REVENUE REPORT CERTIFIED MILLAGE RATES TO LOCAL TAXING AUTHORITIES; ELIMINATING THE REQUIREMENT THAT LOCAL TAXING AUTHORITIES ADOPT A RESOLUTION TO INCREASE MILL LEVIES IN EXCESS OF THE CERTIFIED MILLAGE RATES; AMENDING SECTIONS 7-6-2522, 15-10-202, 15-10-206, AND 15-10-420, MCA; REPEALING SECTIONS 15-10-204, 15-10-205, 15-10-207, AND 15-10-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE	1975
420	(<i>Senate Bill No. 511; Thomas</i>) REVISING SCHOOL FUNDING THROUGH THE USE OF THE STATE UNIVERSITY FUND; REVISING THE ALLOCATION OF TIMBER PROCEEDS FOR MONTANA UNIVERSITY SYSTEM LANDS; PROVIDING THAT TIMBER PROCEEDS BECOME A PART OF THE INCOME STREAM RATHER THAN BEING DEPOSITED IN THE CORPUS; AMENDING SECTION 77-1-109, MCA; AND PROVIDING AN EFFECTIVE DATE	1978
421	(<i>Senate Bill No. 519; Roush</i>) REVISING THE TAXATION OF OIL FROM EXEMPT STRIPPER WELL PRODUCTION; IMPOSING THE	

SB 495 Introduced by F. Thomas, et al.

LC0906 Drafter: Petesch

Revise State Land Laws to Increase Funding for Trust

2/22	Introduced		
2/22	First Reading		
2/22	Referred to Taxation		
3/01	Fiscal Note Requested		
3/16	Hearing		
3/20	Revised Fiscal Note Requested		
3/20	Committee Executive Action--Bill Passed as Amended	9	0
3/20	Committee Report--Bill Passed as Amended		
3/23	Taken from 2nd Reading; Rereferred to Taxation	49	0
3/24	Committee Executive Action--Bill Passed as Amended	9	0
3/24	Committee Report--Bill Passed as Amended		
3/27	Revised Fiscal Note Received		
3/27	Revised Fiscal Note Signed		
3/28	Revised Fiscal Note Printed		
3/28	2nd Reading Passed	44	3
3/29	3rd Reading Passed	43	4
	Transmitted to House		
3/30	Referred to Education		
4/02	Hearing		
4/03	Committee Executive Action--Bill Concurred as Amended	17	1
4/03	Committee Report--Bill Concurred as Amended		
4/05	2nd Reading Concurred as Amended	84	16
4/07	3rd Reading Concurred	84	16
	Returned to Senate with Amendments		
4/10	2nd Reading House Amendments Concurred on Voice Vote	50	0
4/11	3rd Reading Passed as Amended by House	48	2
4/11	Sent to Enrolling		
4/12	Returned from Enrolling		
4/13	Signed by President		
4/17	Signed by Speaker		
4/19	Transmitted to Governor		
4/28	Signed by Governor		
4/28	Chapter Number Assigned		
	Chapter Number 418		
	Effective Date: 7/01/2001 - Sections 1-4 and 6-13		
	Effective Date: 1/01/2003, If SB 493 Is Approved by Electorate - Section 5		

SB 496 Introduced by Glaser, et al.

LC0890 Drafter: Everts

Temporarily Exempt New Energy Storage Facilities from Property Taxes

12/04	Fiscal Note Needed		
3/07	Introduced		
3/07	First Reading		
3/07	Referred to Taxation		
3/07	Fiscal Note Requested		
3/12	Fiscal Note Received		
3/12	Fiscal Note Signed		
3/12	Fiscal Note Printed		
3/13	Hearing		
3/13	Committee Executive Action--Bill Passed as Amended	9	0
3/13	Committee Report--Bill Passed as Amended		
3/14	Revised Fiscal Note Requested		
3/16	2nd Reading Passed as Amended	40	9
3/17	3rd Reading Passed	36	7

SENATOR ELLINGSON asked **Carroll South** about the Coal Tax Trust Fund and where the reference was in the bill. **Mr. South** replied the reason that no other state funds could be invested in equities was because of language being stricken - which included every other state fund. Once that is taken out, there are no restrictions. **SENATOR ELLINGSON** asked how the income was calculated if a portion was invested in equities, when regarding dividends or capital gains and losses. **Mr. South** replied there were two investment vehicles. One was a common stock pool, a mutual fund in which the dividends were distributed. That was created in 1981 - though they never distribute capital gains. That is why pensions have done so well. You do not want to lose the compounding effect. The recommendation by the Board of Investments, if you are going to invest the School Trust in capital stocks, do it immediately in a package that will give you a piece of the 500 largest companies in the country which is the S&P 500. They are using Barclays Global Investment to do that and they do not distribute dividends nor do they distribute capital gains. This is a long term plan, not in the next three or four years. Someone will have to determine how much of the trust should be invested in stocks. That decision does not have to be made now. Here is how it would work - that part of the stock that is invested in stocks would continue to increase in value until it has reached whatever percent should be in the trust. At that point, if the growth in equities is better than the growth in fixed income, you make a decision to start selling units in the pool because you are at 25%. That is when you take out your profits. Until you do that, it is paper profits and paper loss. You need to make sure you do not allocate too much to the trust for equities. **SENATOR ELLINGSON** asked if this meant the capital gains are put back into the investment vehicles. **Mr. South** replied the S&P 500 does not distribute dividends and that is where they recommend where the investments are placed. Once you start selling then it is considered income. **{Tape : 1; Side : B; Approx. Time Counter : 19 - 25.8}**

Closing by Sponsor: **SENATOR THOMAS** closed. He felt this was a good move forward. He pointed out this would work well in the retirement system and it would work well in the state fund. He stated it was time to invest the education funds more wisely. This will provide for a dramatic funding increase for schools. **{Tape : 2; Side : A; Approx. Time Counter : 0 - 12}**

HEARING ON SENATE BILL 495

Sponsor: **SENATOR FRED THOMAS**, SD 31, Stevensville

Proponents: Linda McCulloch, Superintendent of Public Instruction; Bob Brown, Secretary of State; Jason Thielman, Deputy Secretary of State; Dustin Stewert, Associated Students; Webb Brown, Montana Chamber of Commerce; Erik Feaver, MEA, MFT; Mary Whittinghill, Montana Taxpayer Association; Dave Puyer, MRTA

Opponents: None

Opening Statement by Sponsor: SENATOR THOMAS presented the bill. He said the bill would help solve funding problems right now. They expect this to generate \$7-10 million dollars for the School Trust Fund this year and next. It will produce an increasing stream of revenue in future years which would then be distributed to the schools. It does this by authorizing an irrevocable loan of no more than \$100 million dollars from the Coal Tax Trust Fund so that a newly created fund called a Guaranteed Account can purchase mineral royalties from the State Land Board. These royalties would then be used first to pay back the loan to the Coal Trust. Then they will be used to reimburse the General Fund for any interest income loss from the loan. Any additional royalties will remain in the Guarantee Account where they will be available for distribution for the schools. {Tape : 2; Side : A; Approx. Time Counter : 12 - 16}

Proponents' Testimony: Superintendent Linda McCulloch distributed written testimony in support of the bill. EXHIBIT(4) {Tape : 2; Side : A; Approx. Time Counter : 16 - 23.3}

Secretary of State Bob Brown, testified in support of the bill. He stated this would solve school funding without raising taxes and could be used in the near term to pay expenses for education. {Tape : 2; Side : A; Approx. Time Counter : 23.3 - 25}

Jason Thielman, Deputy Secretary of State, described how the mineral royalties would flow into the funds. EXHIBIT(5) He distributed a chart of the proposed distribution of revenue. EXHIBIT(6) He noted SB 495 would not affect the General Fund, would provide more money to schools and would repay the Coal Tax Trust Fund. {Tape : 2; Side : A; Approx. Time Counter : 25 - 30}

Dustin Stewert, representing the Associated Students, said the bill provided funds for school districts in the short term.

Bob Vogel, representing the Montana School Board Association, supported the bill and stressed the importance of short term funds for education.

Webb Brown, Montana Chamber of Commerce, urged support from the committee.

Erik Feaver, MEA-MFT, expressed cautious support. He felt the bill was good and necessary.

Mary Whittinghill, Montana Taxpayer Association, supported the concept. She felt it would be a better utilization of current funding.

Dave Puyer, Montana Rural Education Association, supported the bill.

Opponents' Testimony: None

Questions from Committee Members and Responses: **SENATOR ELLINGSON** asked what were the statutory requirements that now prevented these funds from going directly to schools. **Janice Doggett**, legal counsel for the Secretary of State's Office, replied the trust and legacy fund was inviolate and that is why the loan pays fair market value to the fund to make it whole. Those mineral royalties are extracted from that and the money can then be allowed to be diverted to schools. Constitutionally, 95% of the income is designated to the trust and 5% comes out. **Jason Thielman** clarified that mineral royalties were not considered income. Taking the mineral royalties from the trust is considered a permanent disposition of the trust. That goes back to the enabling act and a 1972 court case which interpreted this issue. The reason a lump sum is needed to be put into the Education Trust is to determine the fair market value to make sure you are not making a permanent disposition. After that lump sum payment has been made, there is a fair right to that royalty stream. **SENATOR ELLINGSON** asked about the \$13 million dollars that might be available. **Mr. Thielman** replied that was a net after all the obligations were paid. That was additional money available to states. The gross number was \$21.5 million dollars that comes to the Education Trust to Schools. **{Tape : 2; Side : B; Approx. Time Counter : 0 - 12}**

SENATOR ELLINGSON asked where the bill addressed the authorization of the loan from the Coal Tax Trust Fund. **Mr. Thielman** said that language plus the amendments by **Greg Petesch** should be considered.

Closing by Sponsor: **SENATOR THOMAS** closed. He noted the bill would provide for the best use of the assets for the children.

The question was called. The motion **PASSED** unanimously.

EXECUTIVE ACTION ON SENATE BILL 495

SENATOR COLE MOVED THE BILL. SENATOR ELLIS MOVED THE AMENDMENT #049502. EXHIBIT(10) Mr. Heiman explained the amendment. He said it would provide the administrative detail regarding contracts that were involved. **{Tape : 3; Side : A; Approx. Time Counter : 0 - 2.2}**

SENATOR COLE said it was his understanding that the amount of the loan was to be \$64 million rather than \$100 million and he wondered if it could be amended to reflect this. **Mr. Thielman** replied this could be done and still achieve the same objective. You would not know exactly what it would cost to buy production rights. He said \$75 million would allow for variations in negotiations.

SENATOR COLE said he would like to amend the amendment on page 3 to \$70 million. **SENATOR ELLIS** said he did not think he would vote for that amendment. He could see the concerns but this would tie the hands in the Initiative and result in a failure because we tried to negotiate too cheaply. **SENATOR COLE** said he would rather be on the conservative side when making this loan. He wanted to hold it down so would agree to amend him amendment to \$75 million dollars. **CHAIRMAN DEPRATU** clarified this would amend the amendment to change the \$100 million to read \$75 million.

The question was called on the amendment. The amendment was **ADOPTED** with a vote of 8-1.

The question was called on amendment as amended. The motion was **ADOPTED** unanimously.

SENATOR STONINGTON presented an additional amendment. **EXHIBIT(11)** She said the amendment clarified that the money would be used for the funding structure. The question was called. The amendment was **ADOPTED** unanimously.

The question was called on the bill as amended. The motion **PASSED** unanimously. **{Tape : 3; Side : A; Approx. Time Counter : 2.2 - 10.5}**

ADJOURNMENT

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON TAXATION

Call to Order: By **CHAIRMAN BOB DEPRATU**, on March 23, 2001 at
3:38 P.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. Bob DePratu, Chairman (R)
Sen. Alvin Ellis Jr., Vice Chairman (R)
Sen. John C. Bohlinger (R)
Sen. Mack Cole (R)
Sen. Pete Ekegren (R)
Sen. Jon Ellingson (D)
Sen. Bill Glaser (R)
Sen. Dan Harrington (D)
Sen. Emily Stonington (D)

Members Excused: None.

Members Absent: None.

Staff Present: Lee Heiman, Legislative Branch
Deb Thompson, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:
Executive Action: Senate Bill 495 Reconsider

EXECUTIVE ACTION ON SENATE BILL 495

SENATOR BOHLINGER MOVED TO RECONSIDER SB 495. He moved to adopt the amendment. **EXHIBIT(1)** The question was called. The motion **PASSED** unanimously. **SENATOR BOHLINGER MOVED TO ADOPT AMENDMENT 49505.** **EXHIBIT(2)** The question was called. The motion **PASSED** unanimously.

SENATOR BOHLINGER MOVED DO PASS AS AMENDED. The question was called. The motion **PASSED** unanimously.

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON TAXATION

Call to Order: By **CHAIRMAN BOB DEPRATU**, on March 28, 2001 at
8:00 A.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. Bob DePratu, Chairman (R)
Sen. Alvin Ellis Jr., Vice Chairman (R)
Sen. John C. Bohlinger (R)
Sen. Mack Cole (R)
Sen. Pete Ekegren (R)
Sen. Jon Ellingson (D)
Sen. Bill Glaser (R)
Sen. Dan Harrington (D)
Sen. Emily Stonington (D)

Members Excused: None.

Members Absent: None.

Staff Present: Lee Heiman, Legislative Branch
Deb Thompson, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: Senate Bill 493, 3/2/2001;
Senate Bill 495, 3/2/2001
Executive Action: Senate Bill 350 Pass as
amended 8-1

SENATOR THOMAS said there are amendments to allow the bill to include the Pine Hills School and the Montana School for the Deaf and Blind.

HEARING ON SB 495

Sponsor: SENATOR FRED THOMAS, SD 31, Bitterroot Valley

Proponents: Linda McCullogh, Montana State Superintendent of
Schools

Bob Brown, Montana Secretary of State

Jeff Hindoien, Governor's Office

Webb Brown, Montana Chamber of Commerce

Mary Whittinghill, Montana Taxpayers Association

Eric Feaver, MEA-MFT

Jason Thielman, Chief Deputy of Secretary of State

Lance Melton, MSBA

Dave Puyear, MREA

Opponents: None

Opening Statement by Sponsor:

SENATOR FRED THOMAS, SD 31, Bitterroot Valley, said this legislation helps the legislature solve a more pressing problem and that is the adequate funding in the squeeze that our children and schools face right now. It generates about \$10.4 million for schools over the next two years. It does this by authorizing an irrevokable loan of no more than \$75 million dollars from the Coal Tax Trust Fund. The loan will be deposited into a newly created fund called a Guarantee Fund. It will be used to purchase the mineral royalties from active coal, oil and gas leases on school trust lands. These royalties will be used first to pay back the loan to the Coal Trust Fund, then they will be used to reimburse the general fund for any interest income lost because of the loan. Finally, any additional royalties will remain in the guarantee account where they will be available for distribution to schools as an automatic increase in the ANB entitlements. He realizes the plan is a bit complex and a little bit difficult to follow and that is because the school trust fund is subject to a lot of constitutional and statutory restrictions. It has taken a great deal of work, as well as scrutiny and input, of a lot of legal and financial minds to make this plan work within those parameters by law and by constitution. Under SB 493 the School Trust Fund remains invalid as the constitution requires it to be. An important thing to remember about this

bill is that it will result in about \$10.4 million for the suffering schools this biennium. It does so with a loan that the bill itself says must be paid on a contractual basis. The legislature has authorized loans in the past for other items such as water management program and the Asarco cleanup sites. Montana's children and their futures are just as important as those other items. The beauty of this plan is that it makes money available for school today without adversely affecting the general fund, the Coal Tax Trust Fund or Montana's taxpayers.

Proponents' Testimony:

Linda McCullough, Superintendent of Public Instruction, submitted written testimony. EXHIBIT(3)

Bob Brown, Montana Secretary of State, said he is a member of the State Land Board. He and the Superintendent of Schools recognized that their obligation was to manage state lands to the highest income of the beneficiaries of those lands, the school children of the state of Montana. They made a discovery in the school trust itself in the fact that they felt it could be a great deal more pro-actively managed. That is what was before the committee in SB 493. That provides for some long term support for public education in Montana, but it doesn't help schools much in the interim. That is what led to this legislation. At first they thought they could invest some of the corpus of the school trust money in stock in this biennium, but if they did so, then they would have to take the money out of bonds, which accrue interest, and they would cut the income into the support of education in this biennium by however much they invested in stock in this biennium. They felt they needed to come up with some way to cover the cost of that loss. That is what led them in the direction of this legislation. If SB 493 is approved by the legislature and placed on the ballot before the people, it won't be done until the General Election of 2002. There won't be any effect what so ever by that legislation in this biennium. They were still on the tracks of what they thought might help the income of public schools during this legislative session. That is why this bill comes before the committee. The estimate is that this bill would generate about \$5.2 million in each year of the biennium. It is not as much as many would like to see in support of public schools, but it significant revenue beyond the point of where we are now. It does two things. It busts no trusts, which is important to one of the major political parties and it raises no taxes, which is important to the other major political party. It conserves a strong bipartisan support.

Jeff Hindoien, Governor's Office, said he would urge the committee's support of the bill.

Jason Thielman, Chief Deputy Secretary of State, said he would like to cover the technical aspects of the bill. This legislation is not simple, but it is complex. The first thing the bill does is that the Department of Natural Resources and Conversations will purchase the mineral royalties that are owned by state lands and managed by the State Land Board using the proceeds for an irrevocable loan from the Coal Trust Fund. The mineral royalties are then placed in the guarantee fund. Those mineral royalties that have been placed in the guarantee fund will be distributed to three places: first, the common schools through automatic ANB increases in entitlements; second, to repay the loan to the Coal Trust Fund; third, to backfill the general fund for any lost of interest earnings from the Coal Trust Fund. He passed out a chart which has a explanation of how that money flow works. Under current law, the mineral royalties flow into the trust and legacy fund or the education fund. Under this bill, the first thing that would happen is the Coal Trust Fund would authorize a loan, not to exceed \$75 million, which would then be deposited in the Guarantee Fund, which is a newly created state special revenue account. The Guarantee Fund will then transfer those dollars into the Education Trust Fund. The Education Trust Fund then has passed over those mineral royalty revenues to the guarantee account. The guarantee account then owns that revenue stream and, in a sense, what has happened is we have purchased a 30-year annuity of royalty revenues streams. That royalty revenue stream will then be used for the three before mentioned purposes. The loan from the Coal Trust Fund will not exceed 30 years in the legislation. The loan payments will be a percentage of the mineral production on mineral royalty payments. In the upcoming biennium, the payment will be set at 0% of the mineral royalties to maximize income to schools in this biennium due to the necessary funding. In the following biennium, 2004-2005, 20% of those royalty revenues that have been purchased and placed in that state special revenue guarantee fund, will be used to pay back the loan. That will increase to 25% of the revenue royalties in fiscal years 2006 and 2011 and 34% of the royalties until the loan is paid in full. He explained some charts that were being presented visually.

EXHIBIT(4)

Eric Feaver, MEA-MFT, Montana University System, said they support the bill.

Webb Brown, Montana Chamber of Commerce, said they are in support of the bill.

Mary Whittinghill, President of Montana Taxpayers Association, submitted written testimony. EXHIBIT(5)

Lance Melton, MSBA, said they concur in the testimony given and support the bill.

Dave Puyear, MREA, said they strongly concur with their other education colleagues in support of the bill.

Opponents' Testimony: None

Questions from Committee Members and Responses:

REPRESENTATIVE OLSON asked Mr. Thielman if this money is to buy mineral rights that is to purchase the royalty payments up front. Mr. Thielman said that is right. REPRESENTATIVE OLSON asked how is that value calculated. Mr. Thielman said that Carroll South with the Board of Investments and Curtis Nichols with the Governor's Budget Office provided the actual calculation. They took the historical rate of return in the Trust and Legacy Fund, they built in an assumption that these royalty revenues cannot be predicted with absolute certainty, so you put in a risk factor for that and determine what that rate of return over the time would have been with that amount of money. You then apply that percentage into the future with each year of those royalties, at what they refer to in the fiscal world as a discount rate, to determine the present value of those sums. RERESENTATIVE OLSON said this money will be used to buy the royalties from producing property not anticipated. Mr. Thielman said that is correct. REPRESENTATIVE OLSON asked, then basically this loan from the Coal Trust Fund will be used to set up the grantee fund with royalty funds going to pay back the Coal Trust Fund? Mr. Thielman said that would be one of three things it would be used to do.

REPRESENTATIVE PETERSON asked Mr. Thielman who owns the minerals. He answered, the minerals are owned by the state of Montana with the State Land Board as the trustees. The Representative asked him, who owns the royalties that they are going to buy. Mr. Thielman said the royalties are owned by the state of Montana. The actual owners would be the beneficiaries. REPRESENTATIVE PETERSON said that, if he understands it, the state of Montana now owns the royalties, but they will be purchased for the benefit of the school trust, is that right? Mr. Thielman said, that is correct.

REPRESENTATIVE LEHMAN asked **Mr. Thielman** if this, in effect, although it provides a short term resolution for school funding, it also has a long-term effect on school funding, is that correct? **Mr. Thielman** said that is correct.

REPRESENTATIVE GALVIN-HALCRO had a question for **Secretary Brown**. Will this take a three-quarter vote of the legislature to pass? **Secretary Brown** said yes. **REPRESENTATIVE GALVIN-HALCRO** asked him if he had 58 votes on his side of the aisle. He said they were near 100% in the Senate.

The **Chair** asked who came up with all this work in these bills? **Secretary Brown** said it is extremely complicated. They came up with several different charts and he isn't sure who did what.

REPRESENTATIVE OLSON had a question for **Secretary Brown**. Do you have any charts that show the effect this will have on the dollars going to the schools with the bill verses what it will look like without the bill? **Secretary Brown** said the effects this biennium would be \$10.4 million this biennium and the effects of the following biennium would be \$6.5 million dollars and then it gradually decreases and that is assuming that **SB 493** does not pass. If it does pass, then it gradually increases after about year five. The idea is that **SB 493** is going to pick up around year six. This bill will pick up in the front end of that period of time. **REPRESENTATIVE OLSON** asked if this bill passes and **SB 493** does not, we are not going to be any worse off? **Secretary Brown** said, correct.

Closing by Sponsor: None

HEARING ON HJ 40

Sponsor: **REPRESENTATIVE NORMA BIXBY, HD 5, Big Horn County and Rosebud County**

Proponents: **REPRESENTATIVE CAROL JUNEAU, HD 85, Glacier County, Blackfeet Reservation**

Opponents: **Eric Feaver, MEA-MFT**

Opening Statemnt by Sponsor:

REPRESENTATIVE NORMA BIXBY, HD 5, Big Horn County and Rosebud County, said the resolution is to do a study on the pre-professional teacher tests. The pre-professional skills tests are a series of standardized tests that measure reading, writing, mathematics and listening skills. The cost of each test is \$25

REPRESENTATIVE OLSON asked Mr. Thielman to address the amounts and the kind of investments that can be made. Mr. Thielman said that Secretary Brown does not have a problem with the idea of putting a percentage cap in the bill. SB 495 also has the legislation in it which allows for the investment of equities, should the constitutional amendment pass. An alternative approach could be, you could amend SB 495 to put a percentage cap in statute which would accomplish a similar objective, but would give future legislators the flexibility to address that cap when circumstances change.

Vote: Motion that SB 493 BE CONCURRED IN carried unanimously.

REPRESENTATIVE LEWIS will carry the bill on the floor.

EXECUTIVE ACTION ON SB 495

Motion: REP. LEHMAN moved SB 495.

Discussion:

Connie Erickson passed out the amendments and explained them.
EXHIBIT(7)

Motion/Vote: REP. JACKSON moved that AMENDMENTS TO SB 495, SB049504.AGP BE ADOPTED. Motion carried unanimously.

Motion: REP. GALVIN-HALCRO moved that SB 495 BE CONCURRED IN AS AMENDED.

Discussion:

REPRESENTATIVE OLSON said it might be time for a conceptual amendment in Section 5 of the bill to limit the percentage.

REPRESENTATIVE GALVIN-HALCRO said she is not concerned about the percentage but is about the derivatives and the borrowing possibility. It would make it more palatable for the voting public if they knew that these possibilities do not exist.

REPRESENTATIVE JACKSON said he does not believe the committee has the expertise to set a percentage because there are all kinds of investments that can be made.

REPRESENTATIVE WOLERY said that he believes the committee has the expertise and it will not cause a problem to put a percentage in it now.

REPRESENTATIVE OLSON said he isn't sure about putting a percentage in it as a amendment.

REPRESENTATIVE PETERSON said he would be in favor of no cap on the percentage.

REPRESENTATIVE LEHMAN said he believes the cap will be placed on it when it is debated on the floor of the House.

Vote: Motion that SB 495 BE CONCURRED IN carried 17-1 with Walters voting no.

EXECUTIVE ACTION ON SB 511

Motion: REP. GALVIN-HALCRO moved that SB 511 BE CONCURRED IN.

Discussion:

REPRESENTATIVE LEHMAN moved that SB 511 include the Montana School for the Deaf and the Blind and the Pine Hills School in the list of schools listed in the bill. Connie Erickson will write the amendment.

Discussion:

REPRESENTATIVE MCKENNEY said he was able to visit with Secretaru Brown after the hearing and he supports the amendment. The Representative also supports the amendment. He reminded the committee that all of the proponents supported the amendment also.

The CHAIR said she does not believe that REPRESENTATIVE MATTHEWS is in favor of this amendment. Connie Erickson said that as she reads the title of the bill; she is concerned that the amendment will not fit under the title. - She will look into it before the bill appears on the floor.

REPRESENTATIVE LEHMAN withdrew his amendment.

Vote: Motion that SB 511 BE CONCURRED IN carried unanimously.

REPRESENTATIVE LEWIS will carry the bill on the floor.

(5) The treatment provided to the defendant at a treatment program must be at a level appropriate to the defendant's alcohol or drug problem, or both, as determined by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services. Upon determination, the court shall order the defendant's appropriate level of treatment. If more than one counselor makes a determination as provided in this subsection, the court shall order an appropriate level of treatment based upon the determination of one of the counselors.

(6) Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a chemical dependency education course or treatment program. If the defendant fails to attend the education course or treatment program, the counselor shall notify the court of the failure.

(7) A court or counselor may not require attendance at a self-help program other than at an "open meeting", as that term is defined by the self-help program. A defendant may voluntarily participate in self-help programs.

(8) Chemical dependency treatment must be ordered for a first-time offender convicted of a violation of 61-8-401 or 61-8-406 upon a finding of chemical dependency made by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services.

(9) (a) On a second or subsequent conviction, the treatment program provided for in subsection (5) must be followed by monthly monitoring for a period of at least 1 year from the date of admission to the program.

(b) If a defendant fails to comply with the monitoring program imposed under subsection (9)(a), the court shall revoke the suspended sentence, if any, impose any remaining portion of the suspended sentence, and may include additional monthly monitoring for up to an additional 6 months."

Section 4. Coordination instruction. If Senate Bill No. 207 is passed and approved and if it includes a section that removes the forensic unit at Warm Springs as one of the facilities or programs of the department of corrections, then [section 1] is void.

Section 5. Effective date. [This act] is effective July 1, 2001.

Section 6. Applicability. [This act] applies to persons sentenced under 61-8-731 for offenses committed on or after [the effective date of this act].

Approved April 28, 2001

CHAPTER NO. 418

[SB 495]

AN ACT REVISING SCHOOL FUNDING THROUGH THE USE OF THE PUBLIC SCHOOL FUND; REVISING THE STRUCTURE OF THE PUBLIC SCHOOL FUND; AUTHORIZING THE BOARD OF INVESTMENTS TO PURCHASE THE MINERAL PRODUCTION RIGHTS HELD BY THE PUBLIC SCHOOL FUND; PROVIDING THAT A PORTION OF ROYALTY PAYMENTS ON THE PURCHASED MINERAL PRODUCTION RIGHTS MUST BE DEPOSITED IN THE GUARANTEE ACCOUNT; LOANING MONEY FROM

THE COAL SEVERANCE TAX PERMANENT FUND TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR THE PURCHASE OF THE MINERAL PRODUCTION RIGHTS; APPROPRIATING THE LOAN PROCEEDS; REQUIRING REPAYMENT OF THE EXPENDED AMOUNTS FROM MINERAL ROYALTY PROCEEDS; DELETING THE PROHIBITION ON PUBLIC FUND INVESTMENT IN CORPORATE STOCK CONTINGENT ON THE PASSAGE OF THE CONSTITUTIONAL AMENDMENT ALLOWING INVESTMENT IN CORPORATE STOCK; AMENDING SECTIONS 17-6-201, 17-2-303, AND 17-2-304, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definition. (1) As used in [sections 1 through 3] "distributable revenue" means 95% of all revenue from the management of school trust lands and the permanent fund, including timber sale proceeds, lease fees, interest, dividends, and net realized capital gains.

(2) The term does not include mineral royalties or land sale proceeds that are deposited directly in the permanent fund or net unrealized capital gains that remain in the permanent fund until realized.

Section 2. Permanent fund. (1) The public school fund provided for in Article X, section 2, of the Montana constitution consists of the permanent fund, which consists of the permanent corpus fund.

(2) The permanent fund must be invested for the purpose of generating future income for distribution to public elementary and secondary school districts as provided in Article X, section 5, of the Montana constitution.

Section 3. Guarantee account. (1) There is a guarantee account in the state special revenue fund. The guarantee account is intended to stabilize the long-term growth of the permanent fund and to maintain a constant and increasing distributable revenue stream. All realized capital gains and all distributable revenue must be deposited in the guarantee account. Except as provided in subsection (2), the guarantee account must be distributed to school districts through the basic and per-ANB entitlements.

(2) As long as a portion of the coal severance tax loan authorized in [section 8] is outstanding, the department shall annually transfer from the guarantee account to the general fund an amount that represents the amount of interest income that would be earned from the investment of the amount of the loan that is outstanding in the prior year.

Section 4. Purchase of permanent fund mineral estate. The department of natural resources and conservation may purchase the mineral production rights held by the public school fund established in Article X, section 2, of the Montana constitution for fair market value. If the department of natural resources and conservation purchases mineral production rights, any royalty payments received by the board that are not used to reimburse the coal severance tax trust fund for the loan used for purchasing the mineral production rights must be deposited in the guarantee account provided for in [section 3].

Section 5. Section 17-6-201, MCA, is amended to read:

"17-6-201. Unified investment program — general provisions. (1) The unified investment program directed by Article VIII, section 13, of the Montana constitution to be provided for public funds must be administered by the board of

investments in accordance with the prudent expert principle, which requires an investment manager to:

(a) discharge the duties with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity with the same resources and familiar with like matters exercises in the conduct of an enterprise of a like character with like aims;

(b) diversify the holdings of each fund within the unified investment program to minimize the risk of loss and to maximize the rate of return unless, under the circumstances, it is clearly prudent not to do so; and

(c) discharge the duties solely in the interest of and for the benefit of the funds forming the unified investment program.

(2) (a) Retirement funds may be invested in common stocks of any corporation.

~~(b) Other public funds may not be invested in private corporate capital stock. "Private corporate capital stock" means only the common stock of a corporation.~~

(3) (a) This section does not prevent investment in any business activity in Montana, including activities that continue existing jobs or create new jobs in Montana.

(b) The board is urged under the prudent expert principle to invest up to 3% of retirement funds in venture capital companies. Whenever possible, preference should be given to investments in those venture capital companies that demonstrate an interest in making investments in Montana.

(c) In discharging its duties, the board shall consider the preservation of purchasing power of capital during periods of high monetary inflation.

(d) The board may not make a direct loan to an individual borrower. The purchase of a loan or a portion of a loan originated by a financial institution is not considered a direct loan.

(4) The board has the primary authority to invest state funds. Another agency may not invest state funds unless otherwise provided by law. The board shall direct the investment of state funds in accordance with the laws and constitution of this state. The board has the power to veto investments made under its general supervision.

(5) The board shall:

(a) assist agencies with public money to determine if, when, and how much surplus cash is available for investment;

(b) determine the amount of surplus treasury cash to be invested;

(c) determine the type of investment to be made;

(d) prepare the claim to pay for the investment; and

(e) keep an account of the total of each investment fund and of all the investments belonging to the fund and a record of the participation of each treasury fund account in each investment fund.

(6) The board may:

(a) execute deeds of conveyance transferring real property obtained through investments. Prior to the transfer of real property directly purchased and held as an investment, the board shall obtain an appraisal by a qualified appraiser.

(b) direct the withdrawal of funds deposited by or for the state treasurer pursuant to 17-6-101 and 17-6-105;

(c) direct the sale of securities in the program at their full and true value when found necessary to raise money for payments due from the treasury funds for which the securities have been purchased.

(7) The cost of administering and accounting for each investment fund must be deducted from the income from each fund."

Section 6. Section 77-2-303, MCA, is amended to read:

"77-2-303. Restrictions on land available for sale. (1) *Lands Subject to purchase by the department pursuant to [section 4], land that in the judgment of the board are department is likely to contain valuable deposits of coal, oil, oil shale, phosphate, metals, sodium, or other valuable mineral deposits are is not subject to sale of either the surface land or any of the mineral deposits. However, this subsection does not prohibit the sale of lands containing sand, gravel, building stone, brick clay, or similar materials.*

(2) (a) There is reserved from sale from all state ~~lands~~ *land* bordering on navigable lakes, nonnavigable meandered lakes, and navigable streams, that the board considers in the best interests of the state, a strip of land that includes all the land lying between low-water mark and high-water mark and that extends in width landward from the line of high-water mark of the lake or stream the full width of the 40-acre tract or government lot abutting the line of high-water mark. If the width of the abutting government lot at its narrowest point is less than 100 feet, then the strip reserved must extend to and include the next adjoining 40-acre tract or government lot. The land reserved from sale by this subsection is subject to the granting of easements the same as other state lands.

(b) Strips of land bordering on meandering lakes or on navigable streams, except the strip lying between low-water and high-water mark, whether surveyed and platted into blocks and lots or not, may be leased as provided in this title for the leasing of other state lands."

Section 7. Section 77-2-304, MCA, is amended to read:

"77-2-304. Mineral reservations in state ~~lands~~ land. All coal, oil, oil shale, gas, phosphate, sodium, and other mineral deposits in state ~~lands~~ *land*, except sand, gravel, building stone, and brick clay, which were not reserved by the United States before July 1, 1927, are reserved to the state. ~~All Subject to [section 4], those deposits are reserved from sale except upon a rental and royalty basis as provided by law. A purchaser of state lands land acquires no right, title, or interest in or to any of those deposits. The state also reserves for itself and its lessees the right to enter upon these lands state land to prospect for, develop, mine, and remove these mineral deposits and to occupy and use so much of the surface of the lands land as may be required for all purposes reasonably extending to the exploring for, mining, and removal of the deposits therefrom from the land, but the lessee shall make just payment to the purchaser for all damage done by reason of such entry upon the land and the use and occupancy of the surface thereof of the land.~~

Section 8. Coal severance tax loan — rate of interest — appropriation. (1) There is appropriated to the department of natural resources and conservation from the coal severance tax permanent fund an amount not to exceed \$75 million for the biennium ending June 30, 2003, for the purpose of purchasing mineral production rights as provided in [section 4]. The department shall deposit the appropriated loan proceeds in the guarantee account provided for in [section 3].

(2) The interest to be paid on the loan authorized under subsection (1) must be at the long-term investment rate. The interest is payable as of the date of the transfer of the loan proceeds from the coal severance tax permanent fund to the department.

Section 9. Loan agreement. (1) In order to make the loan authorized in [section 8], the board of investments shall enter into a contract with the department of natural resources and conservation pledging the percentage of mineral royalties to the repayment of the loan over a period of 30 years. The loan agreement may not require a payment on the loan until fiscal year 2004. In fiscal years 2004 and 2005, 20% of the mineral royalties deposited in the guarantee account provided for in [section 3] must be pledged to the loan repayment. In fiscal years 2006 through 2011, not less than 25% of the mineral royalties deposited in the guarantee account must be pledged to the loan repayment, and in succeeding fiscal years, not less than 34% of the mineral royalties deposited in the guarantee account must be pledged to the loan repayment until the loan is fully paid.

(2) The contract must provide that the loan repayment proceeds be deposited in the coal severance tax permanent fund. To the extent possible, the board of investments shall make the loan from the portion of the coal severance tax permanent fund invested in the short-term pool. The loan authorized in [section 8] may not be made until the contract required by this section has become effective.

Section 10. Codification instruction. (1) [Sections 1 through 3] are intended to be codified as an integral part of Title 20, chapter 9, and the provisions of Title 20, chapter 9, apply to [sections 1 through 3].

(2) [Section 4] is intended to be codified as an integral part of Title 17, chapter 6, part 3, and the provisions of Title 17, chapter 6, part 3, apply to [section 4].

Section 11. Three-fourths vote. Because [section 8] appropriates money from the coal severance tax permanent fund, Article IX, section 5, of the Montana constitution requires a vote of three-fourths of the members of each house of the legislature for passage.

Section 12. Coordination. If House Bill No. 41 and [this act] are both passed and approved, then the references to the state equalization aid account contained in 20-9-343(3) in [section 3] of House Bill No. 41 are changed to references to the guarantee account provided for in [section 3 of this act].

Section 13. Effective dates. (1) [Sections 1 through 4 and 6 through 12 and this section] are effective July 1, 2001.

(2) [Section 5] is effective January 1, 2003, if Senate Bill No. 493 is approved by the electorate.

Approved April 28, 2001